

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/11/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.35807 of 2004

1. P.R.Senniappan
2. A.P.R.Arunachalam ... Petitioners

-Vs-

1. Revenue Divisional Officer,
Thiruppur Division,
Thiruppur,
Coimbatore District.

2. The Inspector of Police,
Karumathanpatti Police Station,
Coimbatore District.
(Crime No.413/2004) ... Respondents

Petition filed under Section 482 of Cr.P.C as stated therein.

For Petitioners : Mr. K.Govi Ganesan

For respondents : Mr. V.Arul,
Government Advocate (Crl.Side)

:O R D E R

The above Criminal Original Petition has been filed under Section 48 2 of Cr.P.C to call for the records relating to the proceedings in Na.Ka.No.10022/2004/A1 dated 27.10.2004 on the file of the Revenue Divisional Officer, Thiruppur and to quash the same.

2. Today when the matter was taken up for consideration in the presence of the learned counsel for the petitioners and the learned Government Advocate on the Criminal Side, who is present in the Court appearing on behalf of the respondents, what comes to be known is that it is a proceeding taken out on the part of the first respondent/ Revenue Divisional Officer, Thiruppur under Section 107 Cr.P.C., thereby calling parties to appear before him and the order impugned herein is the order passed by the authority concerned in R.O.C. No.10022/20 04/A1 dated 27.10.2004 calling for the parties being members of 'A' as party classified therein and objecting to the same, the petitioners have come forward to file the above Criminal O.P. seeking to quash the

proceedings on certain legal grounds raised on the part of the petitioners against the said order.

3. The order is a one sentence order without conveying any fact or circumstance or without any discussion so as to arrive at the decision to issue an order of this sort and it is a mute order without conveying anything relevant, particularly, for consideration of the authority and application of mind and therefore, could be branded only as a non-speaking order, which cannot be passed in law.

4. On the part of the learned Government Advocate (Criminal Side), he would come forward to say causing production of xerox copy of the final order passed by the authority concerned in Memo No.10022/2004/A1 dated 16.11.2004 whereunder the said authority, the first respondent herein, in consideration of certain facts and circumstances discussed therein, has arrived at the ultimate conclusion to hold that in the land in question falling under Survey NO.245/1 is a cart track and for the parties mentioned therein namely Senniappan, Subbulakshmi, Arunachalam, Gopalan and others, it is a Government cart track cum path way and thereby declaring the said right and relieving the said parties from the purview of Section 107 Cr.P.C. and further providing for the aggrieved party to prefer an appeal within 30 days from the date of receipt of the said order before the District Revenue Officer, Coimbatore.

5. It is pathetic to note that the ingredients of Sec.107 of Cr.P.C. is entirely different from what has been decided by the first respondent/Sub Divisional Executive Magistrate. Section 107 of Cr.P.C. is pertaining to security for keeping peace in certain cases and the Executive Magistrate on information that a person is likely to commit a breach of peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may require such person to show cause as to why he should not be ordered to executed a bond with or without surety for keeping the peace for such period, not exceeding one year.

6. From the order passed by the Executive Magistrate/the first respondent herein, it is revealed that he is, absolutely, bereft of any knowledge regarding the provision of law, which has been dealt with by him nor having a mind to go into the same nor adhering the principles laid down therein, has passed a different order than what is contemplated under Section 107 of the Code declaring the rights of the parties in a particular piece of land, thus, completely, deviating from the ingredients of the Section 107 Cr.P.C.

7. It is still more pathetic to note that even when no appeal lies before any authority much less before the District Revenue Officer, which is not provided under Sec.107 and the only remedy lies before the High Court, in the form of revision, the authority/the first respondent herein, has given 30 days' time to prefer the appeal if the parties are aggrieved of the said order as though he was passing an executive order forgetting the statutory compulsions as enumerated under Sec.107 of the Code.

8. In short, without going through the provision of law or noting the ingredients of the same and without application of mind, the order has been passed by the Executive Magistrate and Revenue Divisional Officer, Thiruppur. It is only disgraceful to the position held by him. Therefore, while informing the petitioners herein, who have filed a petition of this sort seeking to quash the preliminary order issued by the first respondent in the form of notice calling for the parties to appear for the enquiry on 8.11.2004 without knowing that the final order itself has been passed to testify the said final order in the manner known to law, it has also become incumbent on the part of this Court to inform the Government of Tamil Nadu, the sorry state of affairs in the first respondent/Sub Divisional Executive Magistrate and Revenue Divisional Officer passing an order of this sort is absolutely bereft of the application of law nor adhering to the procedures laid down therein nor affording proper opportunity for the parties to be heard but passing same order out of the ambit of law and therefore it is only proper to deal with the Revenue Divisional Officer, who passed the said order, in accordance with the disciplinary rules and hence the following order.

V.KANAGARAJ, J

In result,

- (i) the above Criminal Original Petition is disposed of as infructuous on account of the final order passed by the authority on the subject however the petitioners will be at liberty to challenge the final order;
- (ii) The Government of Tamil Nadu is hereby directed to initiate proceedings against The Revenue Divisional Officer, who passed the final order regarding the above subject for all his lapses as aforementioned in accordance with the disciplinary laws and rules. Consequently, Crl.M.P.No.11247 of 2004 is closed.

asvm/ks

Index: yes

Internet: yes

To

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